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OFFICE OF PETITIONS

In re Application of :
Pozarnsky et al. :
Application No. 10/026,493 :
Filed: December 20, 2001 : ON PETITION
Attorney Docket No. :
496.014US1 :

This is a decision on the petition under 37 CFR 1.137(a), filed March 18, 2004, to revive the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition is granted.

The above-identified application became abandoned for failure to timely reply to the *Ex Parte Quayle* Office action, mailed April 28, 2003. The Notice set a two (2) month period for reply, and extensions of time were available under 37 CFR 1.136(a). No reply having been received, the above-identified application became abandoned June 28, 2003. A Notice of Abandonment was mailed on November 28, 2003.

Applicant's Assertion

Applicant asserts that a timely reply to the Office action, in the form of an Amendment and Response, along with a one (1) month extension of time request, were timely filed via facsimile on July 28, 2003. In support of this assertion, Applicant provides copies of the Amendment and Response, which includes a Certificate of Transmission dated July 28, 2003.

Under 37 CFR 1.8

"[c]orrespondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

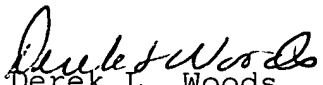
(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

In view of the foregoing, the holding of abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

The application file is being forwarded to Technology Center Art Unit 1724 for processing of the Amendment and Response, filed July 28, 2003 in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at 703-305-0014.


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Petitions Attorney
Office of Petitions